COMPARATIVE DESCRIPTION OF H.R. 1869

AS PASSED BY THE HOUSE AND THE SENATE

(Relating to Requirement for Contemporaneous Recordkeeping for Automobiles and Other Business-Related Expenses)

Prepared for the Use of the Conferees

By the Staff of the Joint Committee on Taxation

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CONTENTS

	Page
Introduction	1
I. Comparative Description of H.R. 1869	2
A. Repeal of Requirement that Records be Contemporaneous	2
B. Repeal of Provisions Relating to Return Preparers	3
C. Repeal of Special Negligence Penalty	3
D. Exceptions From Recordkeeping and Exclusion From Income for Certain Vehicles	4
E. Withholding Election	6
F. Reduction in Limitations on Investment Tax Credit and Depreciation for Luxury Cars	7
G. New Regulations	7
II. Revenue Effects	8
III. Airplane Valuation	9

INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a comparative description of the provisions of H.R. 1869 as passed by the House and the Senate. The bill relates to the Tax Reform Act of 1984 (P.L. 98-369) requirements for contemporaneous recordkeeping for automobiles and other business-related expenses.

H.R. 1869 was reported by the House Committee on Ways and Means on April 2, 1985 (H. Rep. No. 99-34), and passed by the House also on April 2, 1985. The Senate Committee on Finance reported a separate bill (S. 245; S. Rep. No. 99-23) on April 2, 1985. The substance of S. 245 as reported, with a further Senate floor amendment, was passed by the Senate on April 3, 1985.

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[1] This document may be cited as follows: Joint Committee on Taxation, Comparative Description of H.R. 1869 As Passed by the House and the Senate (JCX-4-85), May 1, 1985.

I. COMPARATIVE DESCRIPTION OF H.R. 1869

Item	Present Law	House Bill	Senate Amendment
A. Repeal of Requirement that Records be Contemporaneous (secs. 1(a) and (c) and 2(a) of the House bill and secs. 1(a) and (c) of the Senate amendment)			
1. Repeal of "contemporaneous" requirement	1. The Tax Reform Act of 1984 (the 1984 Act) requires that taxpayers maintain "adequate contemporaneous records" to substantiate deductions and credits for business use of automobiles (including local travel), computers, and other listed property.	1. Repeals the word "contemporaneous," effective as if never enacted.	1. Same as House bill.
2. Alternate substantiation method	2. Under sec. 274 (as it read prior to the 1984 Act), taxpayers were required to substantiate deductions for travel away from home, business gifts, etc. by adequate records or by sufficient evidence corroborating their own statements. Prior to the 1984 Act, local travel was not subject to these substantiation standards.	2. As an alternative to maintaining adequate records, taxpayers may substantiate deductions and credits under sec. 274(d) by sufficient written evidence corroborating their own statement. Committee report lists six specific questions concerning mileage and business use that must be asked on tax returns. Effective date.--January 1, 1986. For 1985, the substantiation rules in effect prior to the 1984 Act would apply.	2. Same as House bill, except no requirement that the sufficient evidence be written or that specific questions be asked on tax returns. Effective date.--January 1, 1985.

Item	Present Law	House Bill	Senate Amendment
3. Repeal of regulations	3. The Internal Revenue Service has issued temporary regulations implementing the recordkeeping provisions of sec. 179(b) of the 1984 Act.	3. Recordkeeping regulations issued before the date of enactment to carry out the amendments made by sec. 179(b) of the 1984 Act have no force and effect.	3. Same as House bill.
B. Repeal of Provisions Relating to Return Preparers (sec. 1(b) of the House bill and sec. 1(c) of the Senate amendment)	B. Return preparers must advise taxpayers of the substantiation requirements under sec. 274(d) and obtain written confirmation that those requirements have been met.	B. Repeals this return preparers provision, effective as if never enacted.	B. Same as House bill.
C. Repeal of Special Negligence Penalty (sec. 1(b) of the House bill and sec. 1(c) of the Senate amendment)	C. A special no-fault negligence penalty applies to the portion of any understatement of tax attributable to failure to meet the substantiation requirements of sec. 274(d).	C. Repeals this special negligence penalty, effective as if never enacted.	C. Same as House bill.

Item	Present Law	House Bill	Senate Amendment
D. Exceptions from Substantiation Rules and Exclusion From Income for Certain Vehicles (sec. 2(b) of the House bill and sec. 2 of the Senate amendment)			
1. Exceptions from sec. 274(d) substantiation rules	1. Temporary Internal Revenue Service regulations (see item A.3 above) exempt from the business use substantiation requirements of sec. 274(d) vehicles that are not susceptible to personal use, such as special purpose farm vehicles and specially designed trucks (e.g., forklifts and cement mixers).	1. Exempts from the sec. 274(d) substantiation rules (as amended by the bill) any vehicle that, by reason of its nature, is not likely to be used more than a de minimis amount for personal purposes. The Committee Report lists the following examples of these vehicles: a. clearly marked police and fire vehicles; b. delivery trucks with seating only for the driver; c. flatbed trucks; d. any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds; e. passenger buses used as such with a capacity of at least 20 passengers; f. ambulances or hearses used as such;	1. Exempts the following automobiles and other vehicles from the sec. 274(d) substantiation rules (as modified by the Senate amendment): a. Vehicles required to be used as an integral part of the trade or business of an individual or of his employer (such as in calling on customers or clients, making deliveries, or visiting job sites), so long as use in the trade or business is at least 75 percent of total use. b. Vehicles used by an employee for commuting, where the commuting is for a bona fide business purpose and where the employer does not permit the employee to make other personal use of the vehicle (other than de minimis use), so long as use in the trade or business of the employer is at least 75 percent of total use.

Item	Present Law	House Bill	Senate Amendment
		g. bucket trucks ("cherry pickers"); h. cranes or derricks; i. forklifts; j. cement mixers; k. dump trucks (including garbage trucks); l. refrigerated trucks; m. tractors; and n. combines. Effective date.--January 1, 1986 (the same as for the bill's substantiation rules under item A.2., above).	c. Vehicles used by a governmental unit for police or other law enforcement purposes and vehicles used as an ambulance. Effective date.--January 1, 1985. (Floor amendment by Sen. Wallop, adopted by a vote of 51 to 42.)
2. Exclusion from income and employment taxes	2. Gross income includes the value of various employee benefits, including commuting or other personal use by an employee of an employer-provided automobile; also, the value of fringe benefits is included in the employee's wages for purposes of income tax withholding and FICA and FUTA taxes.	2. Committee report states that it is appropriate for Treasury to provide that under certain conditions all use (including commuting or other personal use) of vehicles described in item D.1. above is excluded, as a working condition fringe benefit, from income and employment taxes. Effective date.--January 1, 1985.	2. Any commuting or other personal use of automobiles or other vehicles described in item D.1. above is excluded from income and employment taxes as a de minimis fringe benefit. Effective date.--January 1, 1985. (Floor amendment by Sen. Wallop, adopted by a vote of 51 to 42.)

Item	Present Law	House Bill	Senate Amendment
3. Exception from investment tax credit and depreciation limits.	3. The maximum investment tax credit for an automobile is $1,000 and the maximum depreciation is $4,000 for the first taxable year the property is in service and $6,000 for each succeeding taxable year. If listed property (including an automobile) is not used more than 50 percent in a trade or business, the property must be depreciated on a straight-line basis over a longer period than ACRS provides and no investment credit is allowed.	3. No provision.	3. All vehicles described in D.1. above are exempt from the 50 percent use rule. Additionally, police and law enforcement vehicles and ambulances are exempt from the investment tax credit and depreciation ceilings. Effective date.--Vehicles placed in service after June 18, 1984. (Floor amendment by Sen. Wallop, adopted by a vote of 51 to 42.)
E. Withholding Election (sec. 3 of the House bill)	E. Income, social security, and railroad retirement taxes must be withheld with respect to non-cash fringe benefits (including an employee's use of a highway motor vehicle), in the manner prescribed in regulations.	E. The employer may elect not to withhold income taxes with respect to the non-cash fringe benefit attributable to the use of a highway motor vehicle. The employer may make this election only if it so notifies the employee and if it includes the value of the benefit on the employee's Form W-2. An electing employer must still withhold social security (or railroad retirement) taxes. Effective date.--January 1, 1985.	E. No provision.

Item	Present Law	House Bill	Senate Amendment
F. Reduction in Limits on Investment Credit and Depreciation for Luxury Automobiles (sec. 4 of the House bill)	F. The maximum investment tax credit for an automobile is $1,000 and the maximum depreciation is $4,000 for the first taxable year the property is in service and $6,000 for each succeeding taxable year. These amounts are indexed for automobile price inflation, beginning in 1985.	F. Limits reduced to $675 of investment tax credit; $3,600 of depreciation in first year; and $5,400 of depreciation in each succeeding year. Reduced limits are indexed for automobile price inflation in 1986 and succeeding years. Effective date.--Property placed in service or leased after April 2, 1985, with a binding contract exception.	F. No provision.
G. New Regulations (sec. 5 of the House bill)	G. The Internal Revenue Service has authority to issue regulations under the Internal Revenue Code.	G. Requires that the Internal Revenue Service issue regulations to carry out the provisions of the House bill by October 1, 1985.	G. No provision.

II. REVENUE EFFECTS OF AUTO RECORDKEEPING AND RELATED PROVISIONS

(Millions of Dollars)

	1985	1986	1987	1988	1989	1990	1985-88	1985-90
A. H.R. 1869 as passed by the House								
Caps	20	110	152	162	169	177	444	790
Recordkeeping	-13	-53	-88	-98	-101	-104	-252	-457
Withholding	-74	-61	-60	-18	-16	-16	-213	-245
Total	-67	-4	+4	+46	+52	+57	-21	+88
B. H.R. 1869 as amended and passed by the Senate								
Recordkeeping	-40	-137	-211	-232	-243	-253	-620	-1,116
Wallop amendment	-461	-969	-1,139	-1,264	-1,323	-1,368	-3,833	-6,524
Total	-501	-1,106	-1,350	-1,496	-1,566	-1,621	-4,453	-7,640

III. AIRPLANE VALUATION

Item	Present Law	House Bill	Senate Amendment
III. Airplane Valuation	The value of personal use by an employee of noncommercial aircraft owned by the employer is included in the employee's gross income and in wages for FICA and other employment tax purposes. Temporary Treasury regulations provide the following valuation rules for such flight benefits: 1. Key employee (5% owner, officer, etc.) (a) trip with primary business purpose - 100% of coach fare (b) trip with some business purpose -- 3 times first class fare (c) trip with no business purpose -- charter rates for similar plane or similar trip 2. Non-key employee "hitchhiker" -- 100% of coach fare. Treasury regulations provide that the value of a free flight on a commercial airplane for a parent of an airline employee is 50% of the highest unrestricted coach fare.	No provision.	The Committee Report to accompany S. 245 states the Committee's intent that Treasury substitute the following safe-harbor valuation rules with respect to employee flights on employer-provided noncommercial aircraft that constitute taxable fringe benefits, for the valuation rules with respect to such benefits that are currently set forth in temporary regulations: [redacted]

(The Senate rejected by a vote of 46 to 47 a floor amendment offered by Sen. Metzenbaum providing that it is the sense of the Congress that existing Treasury regulations that impute income to corporate executives ("key employees") for use of non-commercial aircraft shall not be amended or altered to reduce the income imputed to these employees.)

Revenue Effect--Fiscal Years
(Millions of Dollars)

1985	-8
1986	-13
1987	-14
1988	-15
1989	-16
1990	-17
Sum of 1985-1988	-50